

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0794, Ralph L. Akins & a. v. Secretary of State of New Hampshire, the court on August 25, 2006, issued the following order:

The defendant moves for reconsideration and/or clarification of our opinion issued August 17, 2006. In their response to the motion, the plaintiffs assent to the defendant's request that we stay our decision to the extent necessary to permit the September 12, 2006, primary election to proceed under existing law and practice. The defendant correctly notes in his motion that our opinion in this case addressed the general election ballot design statute, RSA 656:5, and the defendant's practice of alphabetizing candidates within party columns on the general election ballot. We were not asked to address the design of ballots in other elections, and thus did not do so. After consideration of the motion and the response thereto, we grant this request. The defendant's request to stay the effect of the opinion until after the November 2006 general election, however, is denied.

The defendant argues that the legislature has delegated authority to him to prepare the ballot to the extent that preparation has not been dictated by statute. See RSA 656:1. In our August 17 opinion, we held that because neither the provision of RSA 656:5 requiring that the party receiving the most votes in the prior election enjoy first place on the ballot nor the defendant's practice of alphabetizing candidates is necessary to achieve a manageable ballot, neither restriction survives strict scrutiny, and both are thus unconstitutional under Part I, Article 11 of the New Hampshire Constitution. Nothing in our opinion otherwise limits the authority of the defendant or the legislature to determine how a constitutional ballot will be prepared for the November 2006 general election or thereafter. Accordingly, to the extent necessary, we clarify that we remand this case to the superior court for the purpose of entering judgment consistent with our opinion, and not for the purpose of dictating how constitutional ballots will be prepared for the November 2006 general election or thereafter.

So ordered.

Broderick, C.J., and Dalianis, Duggan, Galway and Hicks, JJ., concurred.

**Eileen Fox,
Clerk**